



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,871	03/18/2004	Philip Russel James Smith	66347-104	5458
68804	7590	01/12/2009		
JOHN P. DE LUCA 17420 RYEFIELD CT. DICKERSON, MD 20842			EXAMINER RAMDHANE, BOBBY	
			ART UNIT 1797	PAPER NUMBER
			MAIL DATE 01/12/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/802,871

Applicant(s)

SMITH ET AL.

Examiner

BOBBY RAMDHANIE

Art Unit

1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-14.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1797

Applicant argues that Verwohlt et al does not disclose the alleged invention.

Applicant believes that Verwohlt et al does not disclose the final clause of the amended Claim 1, and asserts that the formation providing a connector portion at the other end of the tube is not disclosed.

The Examiner respectfully disagrees.

Verwohlt et al does indeed disclose this limitation: The Final Office action references Figure 4 Item 22 and specifically the prior art; Column 3 lines 39-48 which states the following:

" According to another aspect the present invention also provides a well or cuvette for use in a microtitration system as described above and having a bottom wall and a side wall extending upwardly therefrom so as to define an upper open end, a depression or groove being formed in the outer surface of the side wall of the well at a position spaced from the bottom wall, said depression or groove being adapted to receive a resilient latch member of a well holder when the well or cuvette is positioned in a well receiving opening defined in the holder."

Applicants argue that this language does not anticipate the groove being at the other end of the tube. The Examiner believes the language in Verwohlt et al, anticipates the "formation providing a connector portion at the other end of the tube." The claim language of the instant application does not limit the formation to be exactly at the end of the tube, nor does the claim recite that the formation is exactly at the end of the tube.

A reasonable interpretation of Verwohlt et al, would allow for the formation to be placed anywhere from the exact bottom of the tube and up along the sidewall of the well.

In addition, obviousness rejections under 103(a) are also applicable in view of Daly (US20020098126).

The anticipation rejections under 102 have been vacated as a result of applicant amending the original claims to now include the multi-well plate (new claims submitted on 06/16/2008). The newly amended claims are directed toward a tube and a multi-well plate (change in scope from the previously alleged invention). Daly is directed toward a tube and does not anticipate the instant claims of the application. The claims in the instant application however, are indeed rendered obvious in view of this reference because Daly discloses all of the other limitations of Claim 1 and gives teaching, suggestion and motivation to include the multi-well plate. Daly discloses in [0003] that tubes are supported at the base via a micro-well plate. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Daly (which comprises the tube) to include a multi-well plate with through bores for securing the tube of Daly, with the formation that matches the formation at the other end of the tube, because it is known in the art to support tubes in multi-well format plates at their base (See Daly [0003]).